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R File No. 421

1940.

Collection No.

Resident's Office
Bangalore

(P 13)

Pros. Nos. 1-2
Serial

Subject.

Execution of Criminal Processes as between
British India & Administered Areas
in Indian States

Previous References.

10/3/37.

Later References.

R $\frac{333}{42}$

R FILE No. 421 1940

Section.

File No.

Heading.

Serial No.

NOTES.

DEPT.
BRANCH.

Pros.

19 . Nos.

Subject.

Execution of Criminal Processes
as between British India
and Administered Areas in Indian
States.

Notes and Orders.

S. 1.

1
The existing position regarding the arrest and surrender of persons from and to this Station and from and to British India may first be noted.

2
From British India to Station. Although the Station is administered by the British Government, the provisions contained in sections 85 and 86 of the Code of Criminal Procedure cannot be made available for the arrest of persons in British India and their removal to this Station for standing their trial in respect of offences committed in the Station. The reason is that the Code in force in this Station is the one applied by the Crown Representative under the Foreign Jurisdiction Order in Council and is different from the Code in force in British India. The only way to secure the presence in the Station after arrest ^{of persons} in British India, therefore, has been recourse to the provisions of the Extradition Act, 1903. Please see in this connection letter from the Political Department dated the 23rd June 1921 where it is suggested that Administered Areas may be included in the description of "territories of a State not being a Foreign State". For practical purposes the interpretation and the practice in this Station have worked well, and the legality has not been questioned. The inclusion of Administered Areas in the description is unavailable. But the issue of an extradition warrant must be under section 7 of the Act and the authority competent to issue such a warrant is the "Political Agent". Please see the definition of "Political Agent" under the General Clauses Act. Now the Resident cannot at once be the Provincial Government and the principal officer representing the Government. At any rate ~~the~~ office has reference to an officer of the ~~Government~~ in Indian States and not in Administered Areas where is the Government.

* not put up.

* S. N. 3

(P) F 32-1921

* page 43 of book
put up.

From Station to British India. Under the Notification of the Chief Commissioner (before Rendition) No.111, dated the 23rd July 1878, all criminal processes of whatever description when issued by any Magistrate in British India should be executed in the Station as if they were the processes issued by Magistrates in the Station. The arrest in the Station, therefore, of persons in pursuance of warrants issued by the British Indian authorities is perfectly legal. But the removal of such arrested persons has no legal basis, for sections 85 and 86 of the Code in force in the Station is not applicable for the reasons stated in the previous paragraph. Nor does the Extradition Act in British India provide for the surrender of persons from Indian States to British India.

In all the circumstances, the execution of criminal processes as between British India and Administered Areas in Indian States and the surrender of persons as between such areas must be regulated by specific legislation in British India and a corresponding notification in the Administered Areas under the Foreign Jurisdiction Order in Council. The Political Department may be informed that Resident agrees that legislation in British India and a notification in respect of the Administered Areas would be necessary for enforcing the presence in British Indian Courts or in Courts of Administered Areas of accused persons who are for the time ^{being} in an Administered Area or in British India, as the case may be. Draft submitted.

(from para 1)

Para.

15-6-40

Secretary

5

It is likely in view of the recent Sind decision that the law as it stands, may be challenged at any time.

Draft may come

Kedh

Att. G/O

Dep

G.O.

S. N. 2: Issue

A

16-1-40

18-8-40

20-9-40

20-10-40

20-11-40

Dy.No.269

S.N. 3

6. Please see S.N.'s. 1 and 2, and paras 1 to 5 of notes.

7. The matter has now been placed on a statutory basis, and execution of criminal processes and extradition of persons as between British India and Administered Areas, are now regulated by the present Notification and Act XIV of 1941.

Gazette of India -
29-11-1941 - Part IV
"P"

8. The papers may be sent u/o. to District Magistrate for information and evidence.

Asst. Secy

Secy/Tang

9. It is as well that this matter has now been placed on a statutory basis. D.H. may see.

Kedh

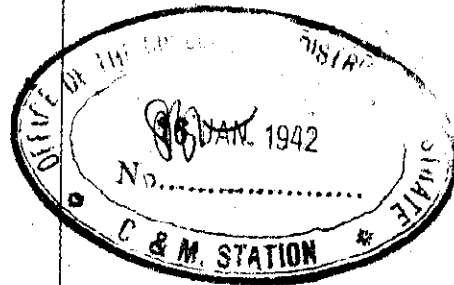
2/12/41 Att. G/O

District Magistrate, C & M. Station Bangalore

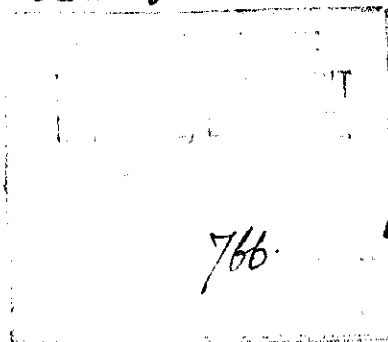
u/o No. R.F. 421-40/Judl., dated the 13th Jan 1942

10 Seen returned
with thanks.

H.H. Carleton
17/1



The Secretary to the Hon'ble the Resident in Mysore, B'lore.
U.O.No. 209-e-42 Dated the 17th January 1942.



20/1/42

11 No further action. May be filed.

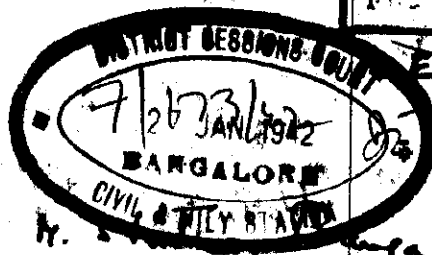
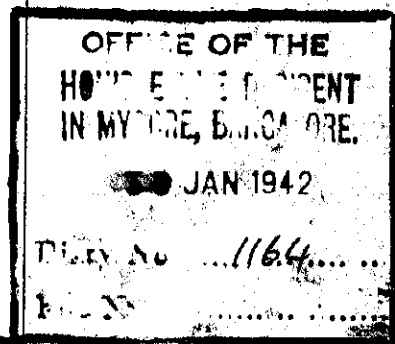
Asst
20.1.42 12 Should not be Dr. and Sessions Judge
see this for information?

20.1.42

13 May be sent to District & Sessions Judge for
information.

Asst
20.1.42

20.1.42



26/1/42 Dr. & Sessions Judge, C & M. Station Bangalore

u/o No. R.F. 421-40/Judl., dated the 26th Jan 1942.

No further
action. May be filed
Asst
20.1.42 12 27/1/42

To, The Secretary to the Hon'ble the Resident
in Mysore, Bangalore

U.O.No. 417/42 dated 29.1.1942
AWAIT.

CORRESPONDENCE.

URGENT.

S. N. I

No. D. 34-I.B. (Camp)/40.

Examine early. LI
All 12/6
Jr/c

From

The Secretary to His Excellency the Crown Representative,

To

The Secretary to His Excellency the Governor of Madras.
" " " Bombay.
" " " Bengal.
" " " the United
" " " Provinces.
" " " the Punjab.
" " " Bihar.
" " " the Central
" " " Provinces &
" " " Berar.
" " " Assam.
" " " Orissa.
" " " Sind.

The Hon'ble the Resident at Hyderabad.
" " in Mysore.
" " for Central India.
" " Rajputana.
" " the States of Western India.
" " the Punjab States.
The Resident for Baroda and the Gujarat States.
" " in Kashmir.
" " at Gwalior and for the States of
" " Rampur and Benares.
" " for the Madras States.
" " Kolhapur and the Deccan States.
" " the Eastern States.

Dated Simla, the 7th June 1940.

Execution of criminal process as between
British India and Administered Areas in
Indian States.

Sir,

not put up. A recent judicial decision by the Court of the Judicial
Commissioner of Sind [(1937) 32 S.L.R., 134] has brought into
prominence the fact that, as the law now stands, no legal means
short of extradition are available for enforcing the presence in
British Indian Courts or in Courts of Administered Areas of
accused persons who are for the time in an Administered Area or
in British India, as the case may be. The same problem attracted
attention as long ago as 1893 and it was then proposed to deal

with.....

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.

12 JUN. 1940

Diary No. 5856

File No.

with the position by the enactment of British Indian legislation and by the issue of a correlative notification under the Foreign Jurisdiction and Extradition Act, 1879. Copies of the Bill and of the draft notification, which were prepared on that occasion but were not proceeded with, are enclosed.

2. In view of the decision hereinbefore referred to which would, they apprehend, inevitably be followed by other Courts, the Government of India consider it urgently necessary to secure the enactment of legislation and the issue of a correlative notification under the Indian (Foreign Jurisdiction) Order in Council in the substantial sense of the Bill and draft notification prepared in 1893.

3. I am to request that this Department may kindly be favoured with the opinion of the Governor of Madras etc. in regard to y o u r c o p i n i o n this proposal in so far as it relates to the Administered Areas (including Railway Lands) in Indian States with which His Excellency the Governor is concerned. It is proposed to you are concerned introduce the necessary Bill at the next session of the Legislature and I am to request that the views of His y c u r Excellency the Governor v i e w s may kindly be supplied at a very early date.

I have the honour to be,

Sir,

Your most obedient servant,

C. S. H. H. H.

Secretary to His Excellency the Crown Representative.

Whereas certain British Courts exercise, in or with respect to territory beyond the limits of British India, criminal jurisdiction which the Governor-General in Council has in such territory;

And whereas it is expedient to legalise-

- (a) the sending, for service and execution within the local limits of the jurisdiction of such Courts as aforesaid, of summonses to and warrants for the arrest of accused persons issued in British India; and
- (b) the service and execution in British India of summonses to and warrants for the arrest of accused persons issued by such Courts as aforesaid;

It is hereby enacted as follows:-

Title and commencement. 1. (1) This Act may be called the Criminal

Processes (Foreign Jurisdiction) Act, 1893; and

(2) It shall come into force at once.

Sending of summonses and warrants for service and execution in foreign territory.

2. (1) When a Criminal Court in British India desires that
 Sending of summons for service in foreign territory. a summons issued by it to an accused person shall be served at any place within the local limits of the jurisdiction of any such Court as is referred to in the first paragraph of the preamble to this Act (being the Court of a Magistrate); it shall send such summons in duplicate to the presiding officer of that Court, to be served.

(2) The proof of service in the case of any summons so sent shall be the proof prescribed by section 74 of the Code of Criminal Procedure in the case of a summons served in British India outside the local limits of the jurisdiction of the Court by which it was issued.

3.

3. When a Criminal Court in British India desires that a
 Sending of warrant for execution in foreign territory. warrant issued by it for
 the arrest of any accused
 person shall be executed at any place within the local limits of
 the jurisdiction of any such Court as is referred to in the first
 paragraph of the preamble to this Act (being the Court of a
 Magistrate), it shall send the same, by post or otherwise, to the
 presiding officer of that Court, to be executed.

Service of summons and execution of warrants issued by
 British Courts in foreign territory.

4. (1) When a Magistrate in British India has received
 Service and execution in British India for service or
 of summonses and warrants issued by British Courts in foreign territory. execution a
 summons to, or a warrant for the arrest of, an accused person
 issued by a British Court in the exercise of such jurisdiction
 as is referred to in the first paragraph of the preamble to this
 Act,

such Magistrate shall cause the same to be served or
 executed as if it were a summons or warrant ~~XXXX~~ received by him
 from a Court in British India for service or execution within
 the local limits of his jurisdiction.

(2) When any such warrant of arrest has been so executed,
 the person arrested shall, so far as is possible, be dealt with
 in accordance with the procedure prescribed by sections 85 and
 86 of the Code of Criminal Procedure, 1882.

Whereas certain British Courts exercise, in or with respect to territory beyond the limits of British India, criminal jurisdiction which the Governor-General in Council has in such territory.

And whereas ^{it} is expedient to legalise-

- (a) the sending, for service and execution in British India or within the local limits of the jurisdiction of such Courts as aforesaid, of summonses to and warrants for the arrest of accused persons issued by other such Courts; and
- (b) the service and execution, within the local limits of the jurisdiction of such Courts as aforesaid, of summonses to and warrants for the arrest of accused persons issued in British India or by other such Courts;

In exercise of the powers conferred by sections 4 and 5 of the Foreign Jurisdiction and Extradition Act (XXI of 1879), and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to direct as follows:-

Sending of summonses and warrants for service and execution in British India, or in foreign territory.

1. (1) When any British Court, in the exercise of such jurisdiction as is referred to in the first paragraph of the preamble to this notification, desires that a summons issued by it to an accused person shall be served at any place in British India or within the local limits of the jurisdiction of any other British Court exercising such jurisdiction as aforesaid, it shall send such summons in duplicate,-

- (a) when the accused is in British India, to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, and,

(b).....

(b) when the accused is within the local limits of any such British Court (being the Court of a Magistrate) as aforesaid, to the presiding officer of such Court, to be there served.

(2) The proof of service in the case of any summons so sent shall be the proof prescribed by section 74 of the Code of Criminal Procedure in the case of a summons served in British India outside the local limits of the jurisdiction of the Court by which it was issued.

2. (1) When any British Court, in the exercise of such jurisdiction as is referred to in the first paragraph of the preamble to this notification, desires that a warrant issued by it for the arrest of any accused person shall be executed at any place in British India or within the local limits of any other British Court exercising such jurisdiction as aforesaid, it shall send the same, by post or otherwise,-

(a) when the accused is in British India, to a Magistrate within the local limits of whose jurisdiction he resides or is, and,

(b) when the accused is within the local limits of the jurisdiction of any such British Court (being the Court of a Magistrate) as aforesaid, to the presiding officer of such Court,

to be there executed.

(2) When any such warrant of arrest has been so executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 85 and 86 of the Code of Criminal Procedure, 1882.

Service of summonses and execution of warrants issued by Courts in British India, or British Courts in Foreign territory.

3. (1) When the presiding officer of any such Court as is referred to in the first paragraph of the preamble to this

notification.....

notification has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a Court in British India or by any other such Court as aforesaid,

such presiding officer shall, if the person to be arrested is one who is subject to the jurisdiction of his Court, cause the same to be served or executed in the manner prescribed by the Code of Criminal Procedure, 1882, for the service or execution of a summons or warrant in British India outside the local limits of the jurisdiction of the Court by which the same was issued.

(2) If the person to be arrested is not subject to the jurisdiction of his Court, or if for any reason service of the warrant or summons cannot be effected, such presiding officer shall return the warrant or summons to the Court from which it was received with an endorsement thereon to this effect.

SN 2

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DEPARTMENT.
BRANCH.

No. R.F. 421-40
Judl.

File No.

Serial No.

Issued
20/6
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Issued
1946

Draft Letter
Memorandum
Telegram

Class for telegrams

INLAND:
Immediate
Important
Express
Ordinary

FOREIGN:
Immediate
Important
Ordinary
Without priority

No.

Dated

20th June 19 40

To

The Secretary to His Excel-
lency the Crown Representa-
tive, Simla.

Execution of criminal
process as between British
India and Administered Areas
in Indian States.

To be issued on

Issued on

1st Reminder

2nd Reminder

3rd Reminder

Heading:

Case or Diary No.

If post copy of telegram required

Date of despatch of above

List of enclosures

(Code word for telegrams.)

P. u. c
S. N. I.

Sir,

I have the honour to refer to
your letter No. D.34-I.B.(Camp)/40,
dated the 7th June 1940, and to
say that I agree that legislation
in British India and a notification
in respect of Administered Areas
are necessary for enforcing the
presence in British Indian Courts
or in Courts of Administered Areas
of accused persons who are for the
time being in an Administered Area
or in British India, as the case
may be.

I have etc.,

Resident.

AsRm
15-6-40

Jpr
8/1/42

Secy

S. N. 3

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No.F.167-I.B/41.

Copy of the foregoing notification is forwarded for information to the -

With
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Hon'ble the Resident at Hyderabad,
" " in Mysore,
" " for Central India,
" " Rajputana,
" " the States of Western India,
" " Punjab States,
Resident for Baroda and the Gujarat States,
" in Kashmir,
" at Gwalior and for the States of Rampur and Benares,
" for Kolhapur and the Deccan States and
Secretary to His Excellency the Governor of Assam.

RECEIVED
10 JAN 1942
269

By order, etc.,

[Signature]

for Secretary to His Excellency
the Crown Representative.

Political Department,

New Delhi:

The 3rd January 1942.

110

POLITICAL DEPARTMENT

NOTIFICATION

New Delhi, the 17th December 1941

No. 388-I.B.—Whereas it is expedient to provide for the sending for service and execution, within the local limits of the jurisdiction of Courts in British India, or established or continued by the authority of the Central Government or the Crown Representative in any other part of India, of summonses to, and warrants for the arrest of, accused persons, issued by Courts established or continued by the authority of the Crown Representative in any part of India (hereinafter referred to as Courts to which this Order applies), and also for the service and execution within the local limits of the jurisdiction of Courts to which this Order applies of the like processes issued by Courts in British India or established or continued by the Central Government or the Crown Representative in any other part of India:

Now, therefore, in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1937, and all other powers enabling him in this behalf, the Crown Representative is pleased to make the following Order, namely:—

1. (1) Where a Court to which this Order applies desires that a summons issued by it to an accused person shall be served at any place outside the local limits of its jurisdiction and within the local limits of the jurisdiction of a Court in British India or established or continued by the authority of the Central Government or the Crown Representative in any other part of India, it shall send such summons in duplicate by post or otherwise to the presiding officer of that Court to be served.

(2) The proof of service in the case of any summons so sent shall be the proof prescribed by section 74 of the Code of Criminal Procedure, 1898, in the case of a summons served in British India outside the local limits of the jurisdiction of the Court by which it was issued.

2. Where a Court to which this Order applies desires that a warrant issued by it for the arrest

of an accused person shall be executed at any place outside the local limits of its jurisdiction and within the local limits of the jurisdiction of a Court in British India or established or continued by the authority of the Central Government or the Crown Representative in any other part of India, it may send such warrant, by post or otherwise, to the presiding officer of that Court to be executed.

3. (1) Where a Court to which this Order applies has received for service or execution a summons to, or a warrant for the arrest of, an accused person issued by a Court in British India or established or continued by the authority of the Central Government or the Crown Representative in any other part of India, it shall, if the person to be summoned or arrested is one who is subject to its jurisdiction, cause the same to be served or executed in the manner prescribed by the Code of Criminal Procedure, 1898, for the service or execution of a summons or warrant in British India outside the local limits of the jurisdiction of the Court by which the same was issued.

(2) Where any warrant of arrest has been so executed, the person arrested shall so far as possible be dealt with in accordance with the procedure prescribed by sections 85 and 86 of the Code of Criminal Procedure, 1898, when a warrant of arrest is executed outside the district in which it was issued.

(3) If the person to be summoned or arrested is not subject to the jurisdiction of the Court, or if for any other reason service of the summons or warrant cannot be effected, the Court shall return the same to the Court from which it was received with an endorsement thereon to such effect.

4. This Order shall not apply where provision is made by or under any other law for the time being in force for the service and execution within the local limits of the jurisdiction of a Court to which this Order applies of summonses and warrants in respect of accused persons issued by another such Court.

K. S. FITZE,

*Secy. to His Excellency the
Crown Representative.*